

A-036 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:)
Jeffrey A. Trogolo et. al.) Examiner: Ebrahim, Nabila G.
Application No.: 10/032,370) Group Art Unit: 1618
Filed: December 21, 2001) Conf. No. 5277
For: High Aspect Ratio Encapsulated Inorganic)
Antimicrobial Additive for Controlled Release)

CERTIFICATE OF TRANSMISSION

I hereby certify that this Response totaling 2 pages, is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300, on March 25, 2009.


Edward K. Welch IIRESPONSE TO OFFICE COMMUNICATION OF MARCH 18, 2009

Commissioner for Patents
Mail Stop Non-Fee Amendment
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The undersigned is in receipt of the Office Communication dated March 18, 2009 alleging that that applicants' response of October 31, 2008 to the Office Action issued October 28, 2008 was not fully responsive as applicants had not responded to the election/restriction requirement set forth in that Office Action.

Contrary to the assertion of the examiner, in the fourth full paragraph of the undersigned's Remarks on page 2 of the response of October 31, 2008, the undersigned states:

"In compliance with Applicants' obligation to elect an invention for examination, Applicants elect Invention I, claims 1-7, 10-22, 33-34, 48-49 and 55-64, with traverse."

The undersigned has reviewed the Restriction Requirement of October 28, 2008 once again to make sure that he had not overlooked an election requirement or some additional requirement that may have been presented, yet, none was found. Accordingly, the undersigned can only conclude that his response was in fact fully responsive. If this is not correct, please point out clearly where the further requirement is that the undersigned has not met.

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Applicants continue to traverse the rejection and request that it be withdrawn. Applicants acknowledge the examiner's statement in support of the restriction requirement that "...the search system and the focus of the invention are completely different requiring an undue burden on the patent examiner." Applicants also acknowledge the examiner's stance that "the restriction requirement is necessitated by amendment filed June 21, 2007 in an Request for Continued Examination...." However, applicants are at a loss to understand how the amendments made in the June 21, 2007 filing in any way changed the nature or focus of the invention to all of a sudden necessitate a restriction requirement when, as noted previously, no less than six substantive office actions and two advisory actions had issued in which both the method and product claims, now alleged to present a serious burden for search and examination, were specifically examined.

In applicants' response of June 21, 2007, all of the independent claims were amended to recite that the hydrophilic polymer was "water absorbing, water vapor absorbing and wettable" so as to expedite allowance inasmuch as this amendment led to allowance of applicants' corresponding, co-filed and now issued patent no. US 7,357,949. The undersigned has repeatedly suggested that the examiner review that file since it is similar to the present application and may help in bringing this case to conclusion. In any event, it is not seen how this amendment in any way leads to the conclusion that the inventions are now different. The independent product claims were further modified to clarify that the additive was not merely in the form of "a microparticle" but in the form of "discrete microparticles." Again, it is not seen how this amendment changes the nature of the invention so as to necessitate a restriction requirement.

If the restriction is to be maintained, the undersigned respectfully requests that the next Office Action specifically address the questions raised above so that a decision can be made on whether to appeal the requirement and, if so, enable the undersigned to specifically address the bases upon which the examiner has required and maintained the restriction.

Finally, the undersigned wishes to express his continued frustration at the lack of speed and attentiveness with which the examination of this application has occurred. Setting aside the fact that the response of October 31, 2008 was in fact complete, it has taken just shy of five (5) months for applicants to receive a notice that the response of October 31, 2008 was incomplete: five months! Furthermore, this is not the first time an oversight by the Patent Office has led to a protracted delay. As previously addressed, a sixteen (16) month delay ensued following the Patent Office's allegation that applicants' response of June 21, 2007 was non-compliant, when in fact it was, and despite numerous telephone calls and conversations with the examiner and her supervisor to this point. It is the undersigned's hope that the examiner will now take this application up on an expedited basis.

Respectfully submitted,



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